

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 857

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Steve Komadi na

AN ACT

RELATING TO THE CHILDREN' S CODE; PERMITTING LAW ENFORCEMENT  
AGENCIES TO HELP PARENTS LOCATE MISSING CHILDREN;  
ACCOMMODATING CHILDREN IN PROTECTIVE CUSTODY; AMENDING  
PROTECTIVE CUSTODY TIME LIMITATIONS; PROVIDING REFERRALS AND  
PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-1-4 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS. --As used in the Children's Code:

A. "adult" means a person who is eighteen years of  
age or older;

B. "child" means a person who is less than  
eighteen years old;

C. "court", when used without further

1 qualification, means the children's court division of the  
2 district court and includes the judge, special master or  
3 commissioner appointed pursuant to the provisions of the  
4 Children's Code or supreme court rule;

5 D. "court-appointed special advocate" or "CASA"  
6 means a person appointed as a CASA, pursuant to the provisions  
7 of the Children's Court Rules, who assists the court in  
8 determining the best interests of the child by investigating  
9 the case and submitting a report to the court;

10 E. "custodian" means an adult with whom the child  
11 lives who is not a parent or guardian of the child;

12 F. "department" means the children, youth and  
13 families department, unless otherwise specified;

14 G. "foster parent" means a person, including a  
15 relative of the child, licensed or certified by the department  
16 or a child placement agency to provide care for children in  
17 the custody of the department or agency;

18 H. "guardian" means a person appointed as a  
19 guardian by a court or Indian tribal authority or a person  
20 authorized to care for the child by a parental power of  
21 attorney as permitted by law;

22 I. "guardian ad litem" means an attorney appointed  
23 by the children's court to represent and protect the best  
24 interests of the child in a court proceeding; provided that no  
25 party or employee or representative of a party to the

underscored material = new  
[bracketed material] = delete

1 proceeding shall be appointed to serve as a guardian ad litem;

2 J. "Indian child" means an unmarried person who  
3 is:

4 (1) less than eighteen years old;

5 (2) a member of an Indian tribe or is  
6 eligible for membership in an Indian tribe; and

7 (3) the biological child of a member of an  
8 Indian tribe;

9 K. "Indian child's tribe" means:

10 (1) the Indian tribe in which an Indian child  
11 is a member or eligible for membership; or

12 (2) in the case of an Indian child who is a  
13 member or eligible for membership in more than one tribe, the  
14 Indian tribe with which the Indian child has more significant  
15 contacts;

16 L. "Indian tribe" means a federally recognized  
17 Indian tribe, community or group pursuant to 25 U.S.C. Section  
18 1903(1);

19 M. "juvenile receiving home" means an emergency  
20 residential care facility for non-delinquent juveniles;

21 [~~M-~~] N. "judge", when used without further  
22 qualification, means the judge of the court;

23 [~~N-~~] O. "legal custody" means a legal status  
24 created by order of the court or other court of competent  
25 jurisdiction or by operation of statute that vests in a

underscored material = new  
[bracketed material] = delete

1 person, department or agency the right to determine where and  
2 with whom a child shall live; the right and duty to protect,  
3 train and discipline the child and to provide the child with  
4 food, shelter, personal care, education and ordinary and  
5 emergency medical care; the right to consent to major medical,  
6 psychiatric, psychological and surgical treatment and to the  
7 administration of legally prescribed psychotropic medications  
8 pursuant to the Children's Mental Health and Developmental  
9 Disabilities Act; and the right to consent to the child's  
10 enlistment in the armed forces of the United States;

11 [θ-] P. "parent" or "parents" includes a  
12 biological or adoptive parent if the biological or adoptive  
13 parent has a constitutionally protected liberty interest in  
14 the care and custody of the child;

15 [P-] Q. "permanency plan" means a determination by  
16 the court that the child's interest will be served best by:

- 17 (1) reunification;
- 18 (2) placement for adoption after the parents'  
19 rights have been relinquished or terminated or after a motion  
20 has been filed to terminate parental rights;
- 21 (3) placement with a person who will be the  
22 child's permanent guardian;
- 23 (4) placement in the legal custody of the  
24 department with the child placed in the home of a fit and  
25 willing relative; or

1 (5) placement in the legal custody of the  
2 department under a planned permanent living arrangement;

3 [~~Q-~~] R. "person" means an individual or any other  
4 form of entity recognized by law;

5 [~~R-~~] S. "preadoptive parent" means a person with  
6 whom a child has been placed for adoption;

7 [~~S-~~] T. "protective supervision" means the right  
8 to visit the child in the home where the child is residing,  
9 inspect the home, transport the child to court-ordered  
10 diagnostic examinations and evaluations and obtain information  
11 and records concerning the child;

12 [~~T-~~] U. "reunification" means either a return of  
13 the child to the parent or to the home from which the child  
14 was removed or a return to the noncustodial parent;

15 [~~U-~~] V. "tribal court" means:

16 (1) a court established and operated pursuant  
17 to a code or custom of an Indian tribe; or

18 (2) any administrative body of an Indian  
19 tribe that is vested with judicial authority;

20 [~~V-~~] W. "tribal court order" means a document  
21 issued by a tribal court that is signed by an appropriate  
22 authority, including a judge, governor or tribal council  
23 member, and that orders an action that is within the tribal  
24 court's jurisdiction; and

25 [~~W-~~] X. "tribunal" means any judicial forum other

underscored material = new  
[bracketed material] = delete

1 than the court. "

2 Section 2. Section 32A-3B-4 NMSA 1978 (being Laws 1993,  
3 Chapter 77, Section 76, as amended) is amended to read:

4 "32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME  
5 LIMITATIONS.--

6 A. A law enforcement officer who takes a child  
7 into protective custody shall, with all reasonable speed:

- 8 (1) inform the child of the reasons for the  
9 protective custody; and
- 10 (2) contact the department.

11 ~~[B. When the department is contacted by a law  
12 enforcement officer who has taken a child into protective  
13 custody, the department may:~~

- 14 ~~(1) accept custody of the child and designate  
15 an appropriate facility in which to place the child; or~~
- 16 ~~(2) return the child to the child's parent,  
17 guardian or custodian if the child's safety is assured.]~~

18 B. If a law enforcement officer takes a child into  
19 protective custody pursuant to Section 32A-3B-3 NMSA 1978, the  
20 officer shall transport the child to either a juvenile  
21 receiving home, police station, sheriff's office or a juvenile  
22 justice detention center, provided that the facility has an  
23 area for children in protective custody segregated from  
24 indicted or adjudicated delinquent children, and the child  
25 shall be held in custody until:

underscored material = new  
[bracketed material] = delete

1                   (1) the protective custody has expired and no  
2 petition to extend the custody is filed pursuant to the  
3 provisions of the Family in Need of Court-Ordered Services Act  
4 or the Abuse and Neglect Act;

5                   (2) the child is placed by the department in  
6 foster care; or

7                   (3) the child is returned to the custody of  
8 the parent or guardian provided that the child's safety is  
9 assured.

10                   C. A child taken into protective custody shall not  
11 be placed in or transported in a law enforcement vehicle or  
12 any other vehicle that contains an adult placed under arrest,  
13 unless circumstances exist in which any delay in transporting  
14 the child to an appropriate facility would be likely to result  
15 in substantial danger to the child's physical safety. When  
16 such circumstances exist, the circumstances shall be described  
17 in writing by the driver of the vehicle and submitted to the  
18 driver's supervisor within two days after the driver  
19 transported the child.

20                   ~~[D.— A child taken into protective custody shall~~  
21 ~~not be held involuntarily for more than two days, unless a~~  
22 ~~petition to extend the custody is filed pursuant to the~~  
23 ~~provisions of the Family in Need of Court-Ordered Services Act~~  
24 ~~or the Abuse and Neglect Act.—~~

25                   E.] D. When a petition to extend the custody is

underscored material = new  
[bracketed material] = delete

1 filed or any time thereafter, the children's court or district  
2 court may issue an ex-parte custody order based upon a sworn  
3 written statement of facts showing that probable cause exists  
4 to believe that protective custody of the child is necessary.

5 [F-] E. The protective custody order shall be  
6 served on the respondent by a person authorized to serve  
7 arrest warrants and shall direct the law enforcement officer  
8 to take custody of the child and deliver the child to a place  
9 designated by the court.

10 [G-] F. The Rules of Evidence do not apply to the  
11 issuance of an ex-parte custody order. "

12 Section 3. A new section of the Children's Code is  
13 enacted to read:

14 "[NEW MATERIAL] RUNAWAY CHILD--LAW ENFORCEMENT--PERMITTED  
15 ACTS.--Whenever a law enforcement agency receives a report  
16 from a parent or guardian that a child over whom the parent or  
17 guardian has custody has, without permission, left the home or  
18 residence lawfully prescribed for the child and the parent or  
19 guardian believes the child has run away, a law enforcement  
20 agent may help the parent or guardian locate the child and  
21 take the child into protective custody for up to seventy-two  
22 hours. "

23 Section 4. A new section of the Children's Code is  
24 enacted to read:

25 "[NEW MATERIAL] RUNAWAY CHILD--REFERRALS--PENALTIES.--

underscored material = new  
[bracketed material] = delete

1           A. Upon the second time a child is taken into  
2 protective custody for leaving home or the residence lawfully  
3 prescribed, without permission, the child shall be referred to  
4 a counseling program approved by the children, youth and  
5 families department.

6           B. Upon the third time a child is taken into  
7 protective custody for leaving home or the residence lawfully  
8 prescribed, without permission, the child shall be guilty of a  
9 misdemeanor. "

10           Section 5. APPROPRIATION. -- Three hundred fifty thousand  
11 dollars (\$350,000) is appropriated from the general fund to  
12 the children, youth and families department for expenditure in  
13 fiscal year 2008 for staffing and operational support to  
14 provide a segregated safe area in statewide juvenile detention  
15 centers and juvenile receiving homes for children in  
16 protective custody. Any unexpended or unencumbered balance  
17 remaining at the end of fiscal year 2008 shall revert to the  
18 general fund.

19           Section 6. APPROPRIATION. -- Nine hundred thousand dollars  
20 (\$900,000) is appropriated from the general fund to the  
21 children, youth and families department for expenditure in  
22 fiscal year 2008 to provide counseling services to runaway  
23 children and their families. Any unexpended or unencumbered  
24 balance remaining at the end of fiscal year 2008 shall revert  
25 to the general fund.

underscored material = new  
~~[bracketed material] = delete~~

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25